



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Ratification of Settlement Agreement with Former Electric Utility Director, and Appropriate Funds Therefor

MEETING DATE: September 7, 2005

PREPARED BY: Jere Kersnar, Interim Deputy City Manager

RECOMMENDED ACTION: It is recommended that the City Council ratify the proposed Settlement Agreement with former Electric Utility Director Alan Vallow and appropriate funds therefor.

BACKGROUND INFORMATION: Mr. Vallow's employment with the City was terminated by the City Manager, effective August 29, 2005. As part of the discussions between the City Manager and Mr. Vallow, a proposed Settlement Agreement (copy attached) was negotiated and executed by Mr. Vallow, the City Manager, and the City Attorney, subject to City Council ratification. Among other provisions, the Agreement calls for severance pay up to six months' salary and health insurance benefits through the period of the severance payment, and for a full and complete release of all potential claims against the City by Mr. Vallow.

FISCAL IMPACT: Funding for the unanticipated expense of the severance pay was not included in the FY 2005/06 Budget. The City Council appropriation for this purpose, requested as part of this action, will be reflected in Mid-Year Budget revisions.

FUNDING AVAILABLE: The Council Resolution contains an authorization for appropriation to cover the additional expense included in the Settlement Agreement.

Ruby R. Laite for
James R. Krueger, Finance Director

Jere A. Kersnar
Jere A. Kersnar, Interim Deputy City Manager

Attachment: Settlement Agreement

APPROVED: *Blair King*
Blair King, City Manager

SEPARATION AGREEMENT AND GENERAL RELEASE

1. **Purpose of Agreement:** The intent of this Separation Agreement and General Release ("Agreement") is to mutually, amicably and finally resolve and compromise all possible issues and claims surrounding the employment of Allan Vallow ("Employee") with the City of Lodi ("Employer") and the separation there from.

2. **Acknowledgement of At-Will Status:** Employee acknowledges that his or her employment status with Employer has always been at will and that Employee has no preexisting property right in his or her employment or right to a severance package.

3. **Separation from Employment and Receipt of Compensation and Benefits:** Employee's employment with Employer will end, effective the close of business on Monday, August 29, 2005 ("Separation Date"). Employee acknowledges that on the Separation Date, Employer paid Employee all unpaid salary and unused vacation time, holiday credit, and personal leave earned through the Separation Date. As of the Separation Date, except as otherwise stated herein, Employee will no longer be eligible to receive further payments for wages, salary, vacation or health insurance benefits. However, Employee will be eligible for continuation of health insurance benefits at Employee's own expense pursuant to the provisions of COBRA, the exact terms of which will be provided to Employee in a separate written document.

4. **Employer's Consideration for Agreement:** In exchange for the release and agreements that Employee is making in this Agreement, Employer will provide Employee with a six month severance payment in the amount of Employee's salary at Employee's final rate of pay, including all vacation pay, holiday credit, and personal leave, less all legally required state and federal withholdings, subject to reduction as set forth in this paragraph. This Severance Payment will be paid to Employee in installments and in amounts coinciding with Employers' usual pay periods. In the event, Employee retains new employment during the six month severance period, any remaining severance payment will be forfeited as of the date Employee begins his or her new employment. Employee acknowledges and agrees that but for Employee's execution of this Agreement, Employee would not otherwise be entitled to the benefits described in the paragraph above. Employer shall also provide health insurance benefits (including medical, dental and vision) to Employee through the actual period of the severance payment.

5. **Employee's Consideration for Agreement:** In exchange for the payments and undertakings described in this Agreement, Employee releases and waives *any and all claims*, that he or she might possibly have against Employer, *whether Employee is aware of them or not*. In legal terms, this means that, individually and on behalf of his or her representatives, successors, and assigns, Employee does hereby completely release and forever discharge Employer, its elected and appointed officers, managers, agents, and past and present employees ("the Releasees") from all claims, rights, demands, actions, obligations, and causes of action of any and every kind, nature and character, known or unknown, which Employee may now have, or has ever had, against Releasees arising from or in any way connected with Employee's employment with Employer and/or the separation thereof. This Release covers all statutory, common law, constitutional and other claims, *including but not limited to:*

(a) Any and all claims for wrongful discharge, constructive discharge, or wrongful demotion;

(b) Any and all claims relating to any contracts of employment, express or implied, or breach of the covenant of good faith and fair dealing, express or implied;

(c) Any and all tort claims of any nature, including but not limited to claims for negligence; defamation; misrepresentation; fraud; age, racial, religious or sexual discrimination, racial, religious or sexual harassment (whether quid pro quo or hostile work environment); or negligent or intentional infliction of emotional distress;

(d) Any and all claims under federal, state or municipal statutes or ordinances; any claims under the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 U.S.C. Section 1981, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the Americans With Disabilities Act, the Employment Retirement Income Security Act, the California Labor Code, and any other laws and regulations relating to employment; and

(e) Any and all claims for attorneys' fees or costs.

Employee further agrees that if any such claim is prosecuted in Employee's name before any court or administrative agency, Employee waives and agrees not to take any award of money or other damages from such suit.

6. **Return of Employer Property:** Employee shall return to Employer all property belonging to Employer within 15 days of the execution of this Agreement.

7. **Waiver of Unknown Future Claims:** Employee has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Employee understands that Section 1542 gives Employee the right not to release existing claims of which Employee is not now aware, unless Employee voluntarily chooses to waive this right. Even though Employee is aware of this right, Employee nevertheless hereby voluntarily waives the rights described in Section 1542, and elects to assume all risks for claims that now exist in Employee's favor, *known or unknown*, arising from the subject matter of this Agreement.

8. **Interpretation and Construction of Agreement:** This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Regardless of which party initially drafted this Agreement, it shall not be construed against any one party, and shall be construed and enforced as a mutually prepared Agreement.

9. **No Admission of Liability:** By entering into this Agreement, Employer is not admitting to any liability, wrongdoing or legal violation whatsoever with regard the employment relationship between the parties or with respect to any claims released herein. Employer expressly denies any and all such liability and wrongdoing.

10. **Complete and Voluntary Agreement:** Employee acknowledges that Employee has read and understands this Agreement; that Employee has had the opportunity to, and has been advised by Employer to seek legal counsel of Employee's own choosing and to have the terms of the Agreement fully explained to him or her; that Employee is not executing this Agreement in reliance on any promises, representations or inducements other than those contained herein; and that Employee is executing this Agreement voluntarily, free of any duress or coercion. Employee specifically understands that by entering into this Agreement Employee is forever foreclosed from pursuing any of the claims Employee has waived in paragraph 5 above.

11. **Review and Revocation Periods:** Employee shall have twenty-one (21) days to accept and sign this Agreement. Employee waives said twenty-one (21) day period to accept and sign this Agreement. Employee shall have seven (7) days following the date on which he or she signs this Agreement to revoke it. Revocation must be made by delivering written notice to the City Manager at 221 W. Pine St. Lodi, California, 95240. For the revocation to be effective, written notice must be received no later than 5:00 p.m. on the seventh calendar day after Employee signs this Agreement. If Employee revokes in a timely manner, this Agreement shall not be effective or enforceable, and Employee will not be entitled to any payment or benefits as described in paragraph 4 above.

12. **Savings Clause:** Should any of the provisions of this Agreement be determined to be invalid or unenforceable by a court or government agency of competent jurisdiction, it is agreed by the parties that such determination shall not affect the enforceability of the other provisions herein.

13. **Scope of Agreement:** This Agreement constitutes the entire understanding of the parties on the subjects covered. Except as expressly provided here, this Agreement supersedes and renders null and void any and all prior agreements, whether oral or written, between Employee and Employer.

14. **Arbitration:** The parties agree that any controversy involving the construction or application of any terms, covenants or conditions of this Agreement, or any claims arising out of or relating to this Agreement or the breach thereof will be submitted to and settled by final and binding arbitration, pursuant to the California Arbitration Act, in San Joaquin County, California. Each side will bear its own attorneys' fees in any such arbitration, and the arbitrator shall not have authority to award attorneys' fees *unless* a statutory section at issue in the dispute authorizes the award of attorneys' fees to the prevailing party, in which case the arbitrator has the authority to make such award as permitted by the statute in question.

15. **Ratification:** This Agreement will be binding upon the City only upon its ratification by the Lodi City Council


PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS A FULL RELEASE OF LEGAL CLAIMS, BOTH KNOWN CLAIMS AND UNKNOWN CLAIMS.

Dated: _____

Dated: 8-29-05

CITY OF LODI, a municipal corporation

EMPLOYEE


By 
BLAIR KING
City Manager


ALAN VALLOW

ATTEST:

SUSAN J. BLACKSTON
City Clerk

APPROVED AS TO FORM:


D. STEPHEN SCHWABAUER
City Attorney

E-20

DRAFT

RESOLUTION NO. 2005-_____

A RESOLUTION OF THE LODI CITY COUNCIL
RATIFYING THE SETTLEMENT AGREEMENT
WITH FORMER ELECTRIC UTILITY DIRECTOR
ALAN VALLOW AND APPROPRIATING FUNDS

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby ratifies the Separation Agreement and General Release ("Settlement Agreement") entered into between City Manager Blair King and former Electric Utility Director Alan Vallow, as shown on Exhibit A attached hereto; and

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to appropriate funds as necessary to cover the terms of the Settlement Agreement.

Dated: September 7, 2005

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I hereby certify that Resolution No. 2005-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 7, 2005, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

2005-_____

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Dated: _____

Dated: 8-29-05

CITY OF LODI, a municipal corporation

EMPLOYEE

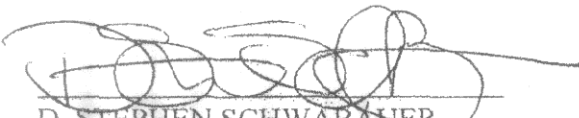
By  _____
BLAIR KING
City Manager

 _____
ALAN VALLOW

ATTEST:

SUSAN J. BLACKSTON
City Clerk

APPROVED AS TO FORM:

 _____
D. STEPHEN SCHWABAUER
City Attorney